To amend title 11, United States Code, to improve the treatment of student loans in bankruptcy, and for other purposes.

Mr. Durbin (for himself and Mr. Cornyn) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 11, United States Code, to improve the treatment of student loans in bankruptcy, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fostering Responsible Education Starts with Helping Students Through Ac-
countability, Relief, and Taxpayer Protection Through Bankruptcy Act of 2021” or the “FRESH START Through Bankruptcy Act”.

SEC. 2. EXCEPTIONS TO DISCHARGE.

Section 523(a) of title 11, United States code, is amended by striking paragraph (8) and inserting the following:

“(8) for an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship, or stipend received from a governmental unit or nonprofit institution, unless—

“(A) excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents; or

“(B) the first payment on such debt became due before the 10-year period (exclusive of any applicable suspension of the repayment period) ending on the date of the filing of the petition;”

“(8A) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—
“(A) an obligation to repay funds received as an educational benefit, scholarship, or stipend, other than an obligation described in paragraph (8); or

“(B) any educational loan, other than a loan described in paragraph (8), that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;”.

SEC. 3. EFFECT OF DISCHARGE OF CERTAIN STUDENT LOANS.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(n)(1) In this subsection:

“(A) The term ‘cohort repayment rate’, with respect to a covered institution of higher education, means the percentage of student borrowers who are making at least some progress paying down their student loans within 3 years of entering repayment.

“(B) The term ‘covered institution of higher education’ means an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.SC. 1002)) that—
“(i) is a participant in the Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.); and

“(ii) has an enrollment of students that is not less than 33 percent students who have received a loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.)).

“(C) The term ‘covered student loan’ means the original principal of a loan—

“(i) the first payment on which became due before the 10-year period (exclusive of any applicable suspension of the repayment period) ending on the date of the filing of the petition; and

“(ii) used by the debtor to make a payment to a covered institution of higher education on behalf of the debtor for the purpose of attaining an educational benefit.

“(2) If a covered student loan is discharged in a bankruptcy case under this title, the covered institution of higher education to which the debtor of the bankruptcy case made a payment with the covered student loan shall pay to the Department of Education an amount determined in accordance with the following:

“(A) An amount equal to 50 percent of the amount of the covered student loan that is discharged, if the covered institution of higher education, on the date on which the first payment on the covered student loan became due—

“(i) had a cohort default rate (as determined under section 435(m) of the Higher Education Act of 1965 (20 U.S.C. 1085(m)) for each of the 3 fiscal years preceding that date that was equal to or more than 25 percent; and

“(ii) had a cohort repayment rate—

“(I) except for borrowers described in subclause (II), that was equal to or less than 20 percent; and

“(II) with respect to borrowers who were graduate or professional students who received a Federal Direct PLUS Loan for enrollment at the institution, that was equal to or less than 35 percent.
“(B) An amount equal to 30 percent of the amount of the covered student loan that is discharged, if the covered institution of higher education, on the date on which the first payment on the covered student loan became due—

“(i) had a cohort default rate (as determined under section 435(m) of the Higher Education Act of 1965 (20 U.S.C. 1085(m)) for each of the 3 fiscal years preceding that date that was equal to or more than 20 percent and less than 25 percent; and

“(ii) had a cohort repayment rate—

“(I) except for borrowers described in subclause (II), that was equal to or less than 25 percent and more than 20 percent; and

“(II) with respect to borrowers who were graduate or professional students who received a Federal Direct PLUS Loan for enrollment at the institution, that was equal to or less than 40 percent and more than 35 percent.

“(C) An amount equal to 20 percent of the amount of the covered student loan that is discharged, if the covered institution of higher edu-
cation, on the date on which the first payment on
the covered student loan became due—

“(i) had a cohort default rate (as deter-
determined under section 435(m) of the Higher Edu-
cation Act of 1965 (20 U.S.C. 1085(m)) for
each of the 3 fiscal years preceding that date
that was equal to or more than 15 percent and
less than 20 percent; and

“(ii) had a cohort repayment rate—

“(I) except for borrowers described in
subclause (II), that was equal to or less
than 30 percent and more than 25 percent;
and

“(II) with respect to borrowers who
were graduate or professional students who
received a Federal Direct PLUS Loan for
enrollment at the institution, that was
equal to or less than 45 percent and more
than 40 percent.”.

SEC. 4. EFFECTIVE DATE; APPLICABILITY.

This Act and the amendments made by this Act
shall—

(1) take effect on the date that is 180 days
after the date of enactment of this Act; and
(2) apply to a petition filed or amended under this title on or after the effective date under paragraph (1) with respect to a debt for an educational benefit, overpayment, loan, scholarship, or stipend of a debtor.